Nos. 17-1717 & 18-18

In The Supreme Court of the United States

THE AMERICAN LEGION, ET AL.,
Petitioners,

v.

AMERICAN HUMANIST ASSOCIATION, ET AL.,
Respondents.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION,
Petitioner,

v.

AMERICAN HUMANIST ASSOCIATION, ET AL.,
Respondents.

On Petitions For Writs Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF OF THE TOWN OF TAOS, NEW MEXICO AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether a 93-year-old memorial to the fallen of World War I is unconstitutional merely because it is shaped like a cross.

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IDENTITY AND INTEREST OF AMICUS CURIAE[1]

The Town of Taos is a small community in the mountains of northern New Mexico famed for its thriving artistic community and historic landmarks. Taos also has a proud history of service in the Nation's defense, one which it would like to continue honoring as it has for decades. Taos maintains a war memorial in its town plaza dedicated to its sons who sailed across the Pacific to fight during the Second World War, and dedicated in particular to the nearly half of whom were killed during the Battle of Bataan, the infamous Bataan Death March, or in the subsequent years of Japanese captivity. Because this memorial includes a bronze cross, however, Taos was recently threatened with a lawsuit for violating the Establishment Clause. The ability of the Taos community to honor their war dead in the somber and respectful way they have done for more than fifty years is under threat, and the decision below, if allowed to stand, will likely lead to the removal or destruction of not only the Taos memorial, but previously noncontroversial memorials and public art installations throughout the country.

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[1] Pursuant to Supreme Court Rule 37.2(a), notice of amicus's intent to file this brief was received by counsel of record for all parties at least ten days prior to the filing of this brief and all parties have consented to this filing. The undersigned further affirms that no counsel for a party authored this brief in whole or in part, and no person or entity, other than MSLF, its members, or its counsel, made a monetary contribution specifically for the preparation or submission of this brief.

Mountain States Legal Foundation ("MSLF") is a nonprofit, public-interest legal foundation organized under the laws of the State of Colorado. MSLF is dedicated to bringing before the courts issues vital to the defense and preservation of individual liberties, the right to own and use property, the free enterprise system, and limited and ethical government. Since its creation in 1977, MSLF attorneys have been involved in numerous cases seeking to protect Americans' civil liberties, as well as numerous cases seeking to protect the ability of Western individuals and communities to govern themselves without unreasonable government interference. Because the decision below presents an imminent threat to those values, MSLF respectfully submits this amicus curiae brief in support of Petitioners on behalf of the Town of Taos and urge this Court to grant the Petition for a Writ of Certiorari.

INTRODUCTION AND SUMMARY OF ARGUMENT

Forty-nine soldiers from Prince George's County, Maryland died in the First World War. As a way of honoring these men's sacrifice, The American Legion and a committee of war mothers organized the construction of the Bladensburg Peace Cross shortly after the end of the war. The memorial is a forty foot-tall Celtic-style Latin cross standing on a large pedestal. The symbol of the American Legion is displayed at the center of the cross, while the words "valor," "endurance," "courage," and "devotion" are carved into the base. On the pedestal is affixed a

plaque listing the names of the fallen soldiers, as well as an inscription reading "DEDICATED TO THE HEROES OF PRINCE GEORGE'S COUNTY, MARYLAND WHO LOST THEIR LIVES IN THE GREAT WAR FOR THE LIBERTY OF THE WORLD," followed by a quote from President Wilson.

While the memorial was conceived, financed, and constructed by private entities, the cross and the land on which it stands were deeded to the Maryland-National Capital Park and Planning Commission in 1961 because the State had determined that new road construction and an increase in traffic meant that it was no longer safe for the American Legion to own what had become the median of a busy intersection. This change in ownership, however, did not materially affect the memorial's uses, as the Bladensburg community continues to use the memorial as a site to commemorate holidays like Veterans Day and Memorial Day.

In 2012, the American Humanist Association initiated this action by filing a complaint alleging that the memorial violates the First Amendment's Establishment Clause—the first such complaint in the memorial's ninety-year history. The District Court held the memorial constitutional, but was reversed 2–1 by the Court of Appeals for the Fourth Circuit. The Fourth Circuit panel held that the cross's "inherent religious meaning" "easily overwhelm[ed]" the government's admittedly "legitimate secular purposes for displaying and maintaining" it. American Legion App. 16a–18a, 22a. The Fourth Circuit then denied *en banc* review, again over vigorous dissent, and Petitioners appealed, seeking this Court's review.

The Fourth Circuit's decision was wrong and should be reversed both because it is in direct conflict with the original public meaning of the Establishment Clause, and because allowing its reasoning to stand poses a grave threat to beloved and historically important memorials, monuments, and other pieces of public art throughout the United States.

Unfortunately, the Fourth Circuit's erroneous decision is a symptom of a larger problem: this Court's Establishment Clause jurisprudence has become hopelessly unmoored from the plain text and historical context of the Constitution. A series of plurality opinions that provided more questions than answers, built on the notoriously unworkable test developed in *Lemon v. Kurtsman*, 403 U.S. 602 (1971), itself a product of what Chief Justice Rehnquist referred to as "a metaphor based on bad history, a metaphor which has proved useless as a guide to judging," *Wallace v. Jaffree*, 472 U.S. 38, 107 (1985) (Rehnquist, J., dissenting), have turned the law of the Establishment Clause into a confused morass of conflicting tests. This Court desperately needs to return to the text of the Constitution, as originally understood, in order to bring some sense of order and consistency to this area of the law.

Review and ultimate reversal by this Court is also absolutely necessary due to the significant and widespread damage that the Fourth Circuit's reasoning may cause throughout the country. The virtually *per se* rule of unconstitutionality for large displays of the Latin cross due to its long association with Christianity set down by the Fourth Circuit puts a great many beloved objects and installations at risk. Amicus the Town of Taos, New Mexico has already

been threatened with a lawsuit over its modest memorial to local men who fought and died in the Battle of Bataan and subsequent Death March, and the Fourth Circuit's reasoning likely extends far beyond monumental crosses to all kinds of publicly owned objects bearing religious imagery. The founding generation would be shocked and outraged that the Constitution—their greatest accomplishment, for which every American remains eternally indebted—would someday be twisted to deny local communities the right to honor their dead in the way they find most meaningful.

ARGUMENT

REASONS FOR GRANTING THE PETITION

I. THE COURT'S ESTABLISHMENT CLAUSE JURISPRUDENCE HAS BECOME HOPELESSLY UNMOORED FROM THE CONSTITUTIONAL TEXT AND HISTORICAL CONTEXT.

Contemporary jurisprudence concerning the Constitution's Establishment Clause is, in a word, confused. Criticized by legal scholars, lower court judges, and even members of this very Court, the muddled and sometimes contradictory rules governing how courts should address Establishment Clause issues have been described as "murky," *Freethought Soc. Of Greater Phila. v. Chester County*, 334 F.3d 247, 256 (3d Cir. 2003), "muddled," *Bauchman v. W. High Sch.*, 132 F.3d 542, 551 (10th

Cir. 1997), and "flawed in its fundamentals and unworkable in practice." *County of Allegheny v. ACLU, Greater Pittsburgh Chapter*, 492 U.S. 573, 669 (1989) (Kennedy, J., concurring in judgment in part and dissenting in part). Each of the various tests this Court has developed over the years have proven difficult for lower courts to apply—when they are even able to determine which test ought to apply in the first place.

Unfortunately, Establishment Clause jurisprudence has become hopelessly unmoored from the original public meaning of the Constitution's text. When the Framers drafted—and the People ratified—the First Amendment, they were doing so within a specific intellectual and historical context and attempting to cure specific political ills. A proper interpretation of the Establishment Clause that comports with the Clause's original meaning and provides adequate guidance to potential future litigants therefore *must* be informed by this context. It is therefore imperative that this Court reject the myriad competing tests it has manufactured over the past few decades and begin its analysis of the present controversy with a hard and honest look at the text and context of the First Amendment.

A. The Current State of Establishment Clause Jurisprudence is an Incoherent Quagmire.

This Court's modern Establishment Clause jurisprudence effectively began with *Everson v. Board of Ed. of Ewing Tp.*, a case concerning whether a New Jersey law that reimbursed parents for the costs of transporting their children to parochial schools

violated the First Amendment, and in which the majority staked out an aggressive theory of the Clause, based largely on Thomas Jefferson's infamous statement that the Establishment Clause erects "a wall of separation between Church and State." 330 U.S. 1, 15–16 (1947) (quoting Letter from Thomas Jefferson to the Danbury Baptist Association (Jan 1, 1802), http:// www.loc.gov/loc/lcib/9806/danpre.html).[2] The Court relied heavily on the mistaken belief that the First Amendment matched entirely the views of Jefferson and Madison, as laid out in the Virginia Bill for Religious Liberty and Madison's Memorial and Remonstrance, with almost no discussion whatsoever of the Constitutional Convention, the First Congress, or the words of non-Virginians. *See Everson*, 330 U.S. at 8–14. Practically from day one, this Court's Establishment Clause jurisprudence has been based on "a metaphor based on bad history, a metaphor which has proved useless as a guide to judging." *Wallace*, 472 U.S. at 107 (Rehnquist, J., dissenting).

In the years following *Everson* this Court experimented with a handful of vague standards

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[2] Then-Associate Justice Rehnquist succinctly described the problems with relying on Jefferson's letter as an explication of the original meaning of the Establishment Clause thusly:

> Thomas Jefferson was of course in France at the time the constitutional Amendments known as the Bill of Rights were passed by Congress and ratified by the States. His letter to the Danbury Baptist Association was a short note of courtesy, written 14 years after the Amendments were passed by Congress. He would seem to any detached observer as a less than ideal source of contemporary history as to the meaning of the Religion Clauses of the First Amendment.

Wallace, 472 U.S. at 92 (Rehnquist, J., dissenting).

before settling on the basic test in use today in *Lemon v. Kurtzman*. In *Lemon*, the Court considered a pair of state statutes authorizing payments in support of religiously affiliated schools, and unanimously held that this provision of direct aid violated the Establishment Clause. *Id.* at 625. In coming to its conclusion, the Court formulated the now-famous three-part *Lemon* test: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive government entanglement with religion.'" *Id.* at 612–13 (internal citations omitted).

The consensus around the *Lemon* test quickly began to fray, however, as this Court has struggled to adapt the *Lemon* factors to different factual scenarios. A series of closely divided decisions defined by narrow pluralities has haunted Establishment Clause jurisprudence ever since, with different circuits disagreeing over which test rightfully applies. *See, e.g., ACLU Neb. Found. v. City of Plattsmouth, Neb.*, 419 F.3d 772, 777–78 n.8 (8th Cir. 2005) (*en banc*) (applying Justice Breyer's legal judgment test from his concurrence in *Van Orden v. Perry*, 545 U.S. 677, 698–705 (2005)); *ACLU v. Mercer Cnty.*, 432 F.3d 624, 636 (6th Cir. 2005) (applying the endorsement test from *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573 (1989)).

B. Text and Context.

1.) The Establishment Clause Was Written In A Specific Historical Context And Intended To Protect Against Specific Evils.

In order to understand the original public meaning of the Establishment Clause, it is important to look at the clause in its historical context. The Framers were not engaged in a merely academic exercise, envisioning grand theories of government disconnected from the realities of life in late Eighteenth Century America; they were working to address the very real depredations of life, liberty, and property the colonists had suffered at the hands of European autocrats.

The Framers were not particularly concerned with the sorts of fine distinctions and multi-part analyses of what constitutes an "endorsement" of or "entanglement" in religion that animate contemporary Establishment Clause debates. The Establishment Clause was included in the First Amendment in order to address a very specific set of problems that existed at the time: namely the *coercive* imposition of a state-established church on unwilling citizens. As Justice Kennedy noted in his dissent in *County of Allegheny*, the Establishment Clause was written with this concern about coercive behavior in mind. 492 U.S. at 659 (1989).

As with all efforts to interpret the meaning of a document, our inquiry into the original meaning of the Establishment Clause must begin with the actual text: "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I. The

first edition of Webster's original American dictionary defines the word "establishment" as "the act of establishing, founding, ratifying or ordaining," such as in "[t]he episcopal form of religion, so called, in England." *Establishment*, Webster, American Dictionary of the English Language (1st ed. 1828). Working under this definition, it becomes apparent that, to an educated audience in the years following independence, "an establishment of religion" would have brought to mind an official, state-managed religious organization similar to the Church of England.

This meaning becomes even more clear when one examines the various drafts of what would become the First Amendment. Madison's original language submitted to the House read: "The civil rights of none shall be abridged on account of religious belief or worship, *nor shall any national religion be established*, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed." 1 Annals of Cong. 434 (1789) (Joseph Gales ed., 1790) (emphasis added). The Select Committee—of which Madison was a member—later revised the language to read: *"[N]o religion shall be established by law*, nor shall the equal rights of conscience be infringed." *Id.* at 729 (emphasis added). During House debate, Madison stated that "he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience." *Id.* at 730. The Senate's final version reported to the House read: "Congress shall make *no law establishing articles of faith or a mode of worship*, or prohibiting the free

exercise of religion." The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins 151 (Neil H. Cogan ed., 2d ed. 2015) (emphasis added). The House rejected this version, and both houses settled on the language eventually included in the Constitution. While the exact phraseology changed with each successive version of the Establishment Clause, it is clear that the underlying purpose was, as Madison described it: to ensure that Congress did not establish a national religion that unwilling citizens would be forced to attend, support, and/or conform to. This relatively narrow, even modest, scope of the Establishment Clause is incompatible with the "wall of separation" endorsed by this Court in *Everson*. 303 U.S. at 16.

2.) Evidence From The Early Republic Illuminates How Narrow The Scope Of The Establishment Clause Originally Was.

The relatively limited scope of the Establishment Clause's original public meaning can also be seen in the many actions taken by early Congresses that, while evidently not violating the letter and spirit of the Constitution, would almost certainly run afoul of the *Lemon* test. The history of the early Republic is filled with examples of Congress acting in ways that would be interpreted today as "endorsing" religion, both in the form of artistic or monumental objects—as in this case—and in the form of verbal or financial support.

The very first American war memorial, commissioned by Congress and honoring General Richard Montgomery, was placed not in a government

building or public park, but in a church: St. Paul's Chapel in New York City. *The General and the Monument*, Trinity Church Wall Street: News & Blogs (Sept. 19, 2011), https://www.trinitywallstreet.org/blogs/archivists-mailbag/general-and-monument. Both Thomas Jefferson and Benjamin Franklin submitted proposed designs for the Great Seal of the United States that prominently incorporated religious imagery. U.S. Department of State Bureau of Public Affairs, *The Great Seal of the United States* 2, https://www.state.gov/documents/organization/27807.pdf. The design eventually adopted (and which is also printed on every $1 bill) prominently includes the Eye of Providence within a triangle on the reverse side, *id.*, a Christian symbol representing the Trinity and the all-seeing eye of God. Albert M. Potts, The World's Eye 68 (1982).

The mismatch between early congressional practice and the modern interpretation of the Establishment Clause is even more obvious in areas beyond visual iconography. The same Congress that passed the First Amendment also called on President Washington to declare a national day of prayer only days later. *See* George Washington, Proclamation: A National Thanksgiving (Oct. 3, 1789), http://press-pubs.uchicago.edu/founders/documents/amendI_religions54.html. The Continental Congress opened with an invocation by an official chaplain employed by Congress, *see* Reverend Jacob Duché, First Prayer of the Continental Congress (Sept. 7, 1774), https://chaplain.house.gov/archive/continental.html, as has every United States Congress since the ratification of the Constitution. *See History of the*

Chaplaincy, Office of the Chaplain, United States House of Representatives, https://chaplain.house.gov/chaplaincy/history.html. The Capitol itself was used for church services throughout the early Republic, including by the great separationist himself, Thomas Jefferson, while he was president. Library of Congress, *Religion and the Founding of the American Republic: Religion and the Federal Government, Part 2*, https://www.loc.gov/exhibits/religion/rel06-2.html. When Congress reenacted the Northwest Ordinance in 1789, it included language stating that "[r]eligion, morality and knowledge bring necessary to good government and the happiness of mankind, Schools and the means of education shall be forever encouraged." The Northwest Ordinance, 1 Stat. 50 (1787).

These are but a few examples of the many ways in which the founding generation did not interpret the Establishment Clause as mandating absolute neutrality from the federal government on religious matters. Early Congresses clearly did not consider many types of direct endorsement of religion to be violations of the Constitution, let alone incidental use of religious imagery placed in a largely secular context. It is disingenuous to argue that the maintenance of a cross-shaped war memorial on publicly owned land constitutes an establishment of religion. The very men who enacted those words into law saw no problem whatsoever with the use of explicitly religious imagery on the Great Seal of the United States or the use of the United States House of Representatives as a Christian church. The plain language of the Establishment Clause, combined with

evidence from the Constitutional Convention and the verifiable practices of the founding generation, definitively show that the confusing mish-mash of tests currently making up this Court's jurisprudence are hopelessly unmoored from the original public meaning of the Establishment Clause, and must be discarded.

II. REAL AND WIDE-SPREAD CONSEQUENCES OF THE FOURTH CIRCUIT'S REASONING.

A. The Town of Taos's Inextricable Link with the Bataan Death March.

On December 8, 1941, just hours after the surprise attack on Pearl Harbor, Japanese forces invaded the Philippines. The 200th Coastal Artillery Regiment, along with the 192nd Tank Battalion, the 194th Tank Battalion, and regular, national, and commonwealth groups of the Philippine army were assigned the grim task of resisting the invaders.

The members of the 200th Coastal Artillery Regiment were all New Mexicans—members of the New Mexico National Guard—chosen for this duty because the overwhelming majority of the soldiers spoke fluent Spanish. The 200th had evolved from the old 111th Calvary, ordered by the War Department to trade in their horses for anti-aircraft cannon in 1939. The men from the Taos area—sixty enlisted and four officers—made up Battery H.

When the Japanese attack on the Philippines began—before news of Pearl Harbor had even reached the men on the island—the 200th was one of the first American units to engage the enemy and the first to

sustain casualties when an early Japanese bomb struck one of its trucks. Over the next few weeks, the 200th fought a delaying action covering the evacuation to the Bataan Peninsula outside Manila, where the Americans and their Filipino allies would attempt to hold the line. In the words of General Wainwright following the end of the war in 1945:

> [t]he 200th Coast Artillery . . . was the first unit in the Philippines, under General of the Army Douglas MacArthur, to go into actions and fire at the enemy, also the first one to go into action defending our flag in the Pacific. First to fire and last to lay down their arms!

Jerry A. Padilla, *Bataan and Its Aftermath: Taosenos Helped Hold the Line*, Ayer Y Hoy en Taos, Fall 2015 Issue 39 at 7–8.

The Japanese forces quickly overwhelmed the defenders, and General MacArthur ordered a strategic withdrawal to Australia. The 200th Coastal Artillery was tasked with manning the artillery batteries guarding the entrance to Manilla Bay—the last defense against the invaders. On May 8, 1942, General Sharp surrendered the defending force. They had held out under constant attack for three months.

The surrender was the beginning of three and a half years of harsh confinement for the Allied survivors, many of whom would lose their lives in the Bataan Death March. The Death March began on April 9, 1942, when the Japanese began sending 60,000 to 80,000 prisoners of war on a 65-mile forced march, during which prisoners were randomly selected for arbitrary executions. The prisoners received little food or water and were frequently

tortured. Those who could not keep up were summarily put to death. The predominantly Hispanic New Mexicans of the 200th were often singled out for special mistreatment, as their Japanese captors were frustrated that they could not always tell the difference between the men of the 200th and the native Filipino soldiers. Of the estimated 80,000 men who began the Bataan Death March, only 54,000 survived to the end.

Upon reaching the overcrowded and ill-equipped prison camps, things were no better. Many prisoners died of disease, and the rest were used as slave labor for years. Those who managed to survive their confinement would not be rescued until near the end of the war, in 1945. For the surviving members of the 200th, memories of their long, brutal captivity, and of the friends they lost, would continue to haunt them even after returning home to New Mexico. Only a handful of veterans from the Bataan Death March are still alive to tell their stories.[3]

B. The Taos Memorial.

The memorial in Taos's town plaza was erected to honor the men who fought and died in these tragic events. It was erected by the War Mothers, a group of women whose children had served during World War II, dedicated in 1960, and paid for exclusively by

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[3] For a more thorough account of the Bataan Death March and surrounding events, including first-hand accounts of surviving soldiers, see generally Michael Norman & Elizabeth M. Norman, Tears in Darkness: The Story of the Bataan Death March and its Aftermath (2009); Lester I. Tenney, My Hitch in Hell: The Bataan Death March (1995).

private donations.[4] The memorial consists of a large bronze cross set into a concrete pedestal. The east face of the pedestal contains a plaque bearing the names of those men of Taos County who served in the Battle of Bataan. The west face bears the names of those Taoseños who died in the Battle, on the 65-mile Death March, or in subsequent captivity. The cross is flanked by two flagpoles flying the United States and New Mexican flags, and a sculpture depicting two soldiers helping a third keep moving during the Death March rounds out the memorial.

The memorial sits in the literal center of town, a focal point of the local community, and has been the site of many events honoring the sacrifices of American veterans over the decades, as well as countless private moments of respectful contemplation by visitors and lifelong Taoseños alike. Only half of the young men sent to war from the Taos area ever returned home. The memorial stands as a lasting, tangible reminder of the sacrifices the people of this small desert community made in the name of freedom—all the more important now that the last survivors of Bataan are passing away.

C. Broader Implications

It is vital that this Court understand the potential ramifications of the Fourth Circuit's reasoning when it declared the Bladensburg Cross a violation of the Establishment Clause. The Town of Taos has been threatened with lawsuits similar to the one giving rise to this current controversy, and a failure by this Court to grant certiorari and overturn the Fourth Circuit's

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[4] The government of the Town of Taos was not involved in the fundraising, planning, design, or construction of the Memorial.

erroneous decision would virtually guarantee Taos will be drawn into costly litigation to remove its memorial from its place in the town plaza. And it would lose, should this Court adopt the Fourth Circuit's reasoning that large cross-shaped sculptures on public property are per se violations of the Establishment Clause.

As demonstrated in Part I(B), *supra*, the installation of a cross as part of a memorial to those who gave their lives in the service of their country clearly does not constitute a government establishment of religion as that language was understood at the time of ratification. Religious imagery has been an important source of inspiration and symbolism in American public art since the dawn of the Republic. Under the Fourth Circuit's reasoning, however, important monuments like the Taos memorial all across the country are imperiled. The grave markers in Arlington National Cemetery would be unconstitutional, as would much of the art in the federal buildings throughout Washington, D.C.,[5] as would practically any object on which the Nation's motto, "In God we Trust," is emblazoned, potentially including the wall above the rostrum in the U.S. House of Representatives and all American currency. *See* U.S. House of Reps., History, Art & Archives,

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[5] See, e.g., John Gadsby Chapman, *The Baptism of Pocahontas* (1839), *in* Architect of the Capitol, Explore Capitol Hill, http://www.aoc.gov/capitol-hill/historic-rotunda-paintings/baptism-pocahontas; Robert W. Weir, *Embarkation of the Pilgrims* (1843), *in id.*, http://www.aoc.gov/capitol-hill/historic-rotunda-paintings/embarkation-pilgrims; Boardman Robinson, *Jesus* (2007), Library of Congress Prints & Photographs Online Catalogue, https://www.loc.gov/pictures/item/2010720202/.

What's in the Capitol?, House Chamber Furniture, http://history.house.gov/Exhibitions-and-Publications/House-Chamber/Rostrum/.

The Establishment Clause does not mandate that all references to religion or uses of religious imagery be erased from the public sphere. "Government may not mandate a civic religion that stifles any but the most generic reference to the sacred any more than it may prescribe a religious orthodoxy." *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1822 (2014). A memorial to the fallen, speaking in solemn and near-universally understood symbolic language, is simply not the first step in Maryland establishing a state religion. By failing to repudiate the reasoning of the Fourth Circuit decision declaring otherwise, this Court would not only be ignoring the original public meaning of the Establishment Clause, but would also be declaring open season on innumerable memorials, monuments, and other objects and structures of immense cultural and historic value.

CONCLUSION

For the foregoing reasons, this Court should grant the Petitions.

Respectfully submitted,

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